

## SENATE BILL No. 406

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-11.6-4-15; IC 33-17-1-11; IC 33-19; IC 34-26-2-1; IC 34-26-2-4.

**Synopsis:** Filing fees and domestic violence. Specifies, in connection with the prosecution of a misdemeanor or felony domestic violence offense, that the victim of domestic violence is not responsible for bearing the costs associated with: (1) the filing of criminal charges against the domestic violence offender; or (2) the issuance or service of a warrant, an order, or a witness subpoena. Specifies, in connection with the filing, issuance, registration, or service of an order, that a victim of domestic violence, stalking, or sexual assault is not responsible for bearing the fees or costs associated with the filing, issuance, registration, or service of a warrant, an order, or a witness subpoena. Inserts a missing cross reference to the Marion County small claims court in the law governing certain protective orders. Makes related changes.

**Effective:** July 1, 2001.

Clark

January 18, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 406

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 33-11.6-4-15 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) The costs  
3 consist of:  
4 (1) a township docket fee equal to five dollars (\$5) plus forty-five  
5 percent (45%) of the infraction or ordinance violation costs fee  
6 under IC 33-19-5-2;  
7 (2) bailiff's service of process by registered or certified mail fee  
8 of six dollars (\$6) for each service;  
9 (3) the cost for the personal service of process by the bailiff or  
10 other process server in the amount of eight dollars (\$8) for each  
11 service, with the exception that:  
12 (A) **subject to IC 33-19-4.5**, personal service to execute a  
13 warrant for a protective order under IC 34-26-2 (or IC 34-4-5.1  
14 before its repeal) shall cost a fee of twelve dollars (\$12); and  
15 (B) writs of restitution and writs of replevin shall cost a fee of  
16 twelve dollars (\$12);  
17 (4) witness fees, if any, in the amount provided by IC 33-19-1-6



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to be taxed and charged in the circuit court of the county; and

(5) a redocketing fee, if any, of five dollars (\$5).

The docket fee and the cost for the initial service of process shall be paid upon the institution of each case. The cost of service rendered subsequent to the initial service shall be assessed and paid after such service has been made, and the cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 2. IC 33-17-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The clerk shall provide each person filing a petition for the issuance of a protective order under IC 34-26-2 without the assistance of an attorney the following information:

(1) The procedure for obtaining a protective order.

(2) When a protective order becomes effective.

(3) Procedures to follow when a protective order is violated.

**(4) Information concerning the waiver of fees under IC 33-19-4.5.**

(b) The information required under subsection (a) must be printed in a manner that can be easily understood by a person who is not an attorney.

(c) The attorney general shall develop an appropriate form to provide the information referred to in subsection (a).

SECTION 3. IC 33-19-4.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

**Chapter 4.5. Costs Related to Domestic Violence Offenses**

**Sec. 1. This chapter applies to all civil and criminal actions.**

**Sec. 2. As used in this chapter, "domestic violence" means:**

**(1) Domestic battery (IC 35-42-2-1.3).**

**(2) Aggravated battery (IC 35-42-2-1.5).**

**(3) Kidnapping (IC 35-42-3-2).**

**(4) Rape (IC 35-42-4-1).**

**(5) Criminal deviate conduct (IC 35-42-4-2).**

**(6) Child molesting (IC 35-42-4-3).**

**(7) Robbery as a Class A felony or Class B felony (IC 35-42-5-1).**

**(8) Burglary as a Class A felony or Class B felony (IC 35-43-2-1).**

**(9) An attempt under IC 35-41-5-1 to commit a crime listed in**

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subdivisions (1) through (8).

(10) An attempt under IC 35-41-5-1 to commit:

(A) Murder (IC 35-42-1-1).

(B) Voluntary manslaughter (IC 35-42-1-3).

Sec. 3. As used in this chapter, "order" has the meaning set forth in IC 5-2-9-2.1.

Sec. 4. As used in this chapter, "sexual assault" means:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Vicarious sexual gratification (IC 35-42-4-5).

(5) Sexual battery (IC 35-42-4-8).

(6) Sexual misconduct with a minor (IC 35-42-4-9).

(7) Incest (IC 35-46-1-3), if the victim is less than sixteen (16) years of age.

(8) An attempt under IC 35-41-5-1 to commit a crime listed in subdivisions (1) through (7).

Sec. 5. As used in this chapter, "victim" means a person against whom domestic violence, stalking, or sexual assault is committed by any of the following:

(1) A current or former spouse of the victim.

(2) A person with whom the victim shares a child in common.

(3) A person who is cohabiting with or has cohabited with the victim as a spouse.

(4) A person similarly situated to a spouse of the victim under Indiana domestic or family violence law.

(5) Another person who is at least eighteen (18) years of age and from whose acts the victim is protected under Indiana domestic or family violence law.

Sec. 6. A victim of domestic violence is not responsible for the costs associated with:

(1) filing criminal charges against the domestic violence offender; or

(2) filing, issuing, registering, or serving:

(A) a warrant;

(B) an order;

(C) a petition for an order; or

(D) a witness subpoena;

in connection with the prosecution of a misdemeanor or felony domestic violence offense.

Sec. 7. (a) This section applies to a civil action filed under IC 34-26-2 for the issuance of an order.

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(b) Prepayment of a fee or other costs is not required by a party who alleges facts in a pleading or motion indicating that:

- (1) the party is a victim; and
- (2) the action is being taken in connection with filing, issuance, registration, or service of an order.

(c) If the court determines that:

- (1) the party is a victim; and
- (2) the action is being taken in connection with filing, issuance, registration, or service of an order;

the court shall waive payment by the party of all fees and costs that would otherwise be imposed on the party. The court may order a party to pay the fees and costs waived under this section if the court determines that the party has committed the domestic violence, stalking, or sexual assault.

Sec. 8. (a) This section applies to a civil or criminal action in which an order may be issued.

(b) Prepayment by a party of witness subpoena fees and other costs related to the issuance of an order is not required if the party alleges facts in a pleading or motion for the order that indicate that:

- (1) the party is a victim; and
- (2) the action is being taken in connection with filing, issuance, registration, or service of an order.

(c) If the court determines that:

- (1) the party is a victim; and
- (2) the action is being taken in connection with filing, issuance, registration, or service of an order;

the court shall waive payment by the party of witness subpoena fees and other related costs that would otherwise be imposed on the party. The court may order a party to pay the fees and costs waived under this section if the court determines that the party has committed the domestic violence, stalking, or sexual assault.

SECTION 4. IC 33-19-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) For each civil action except:

- (1) proceedings to enforce a statute defining an infraction under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);
- (2) proceedings to enforce an ordinance under IC 34-28-5-4 (or IC 34-4-32-4 before its repeal);
- (3) proceedings in juvenile court under IC 31-34 or IC 31-37;
- (4) proceedings in paternity under IC 31-14;
- (5) proceedings in small claims court under IC 33-11.6; and



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(6) proceedings in actions under section 6 of this chapter;  
the clerk shall collect from the party filing the action a civil costs fee  
of one hundred dollars (\$100), except as provided in subsection (b).

(b) **Subject to IC 33-19-4.5**, for each proceeding for the issuance  
of a protective order under IC 34-26-2:

(1) the clerk shall initially collect thirty-five dollars (\$35) of the  
civil costs fee from the party that filed the action or the court may  
waive the initial thirty-five dollars (\$35) of the civil costs fee for  
the party that filed the action; and

(2) upon disposition of the protective order petition under  
IC 34-26-2, the court may order that:

(A) the remainder of the civil costs fee, in the amount of  
sixty-five dollars (\$65), be assessed against the respondent in  
the action as provided in IC 34-26-2-4 or against the party that  
filed the action; and

(B) the initial thirty-five dollar (\$35) civil costs fee be  
reimbursed by the respondent in the action to the party that  
filed the action or assessed against the respondent in the action  
as provided in IC 34-26-2-4.

(c) In addition to the civil costs fee collected under this section, the  
clerk shall collect the following fees if they are required under  
IC 33-19-6:

(1) A document fee.

(2) A support and maintenance fee.

SECTION 5. IC 34-26-2-1 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person may  
petition any court of record **or a small claims court established under**  
**IC 33-11.6-1-3** for a protective order on behalf of that person or a  
member of the petitioner's household.

SECTION 6. IC 34-26-2-4 IS AMENDED TO READ AS  
FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. **Subject to**  
**IC 33-19-4.5**, the court may:

(1) order the clerk of the court to waive any filing fees required  
under this chapter if the petitioner demonstrates by affidavit that  
the petitioner is unable to pay the fees due to all relevant  
circumstances; and

(2) order filing fees to be paid by the respondent after a hearing  
held under this chapter.

SECTION 7. [EFFECTIVE JULY 1, 2001] **IC 33-19-4.5, as added**  
**by this act, applies only to costs for which a victim of domestic**  
**violence, stalking, or sexual assault would otherwise become**  
**obligated after June 30, 2001.**



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